Filed 1/31/02

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES OGLE KISOR,

Defendant and Appellant.

F037789

(Super. Ct. No. SC081832A)

# OPINION

**THE COURT**[*]

APPEAL from a judgment of the Superior Court of Kern County. Michael B. Lewis, Judge.

M. D. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Stephen G. Herndon and Michael P. Farrell, Deputy Attorneys General, for Plaintiff and Respondent.

**-ooOoo-**

[*] Before Ardaiz, P.J., Dibiaso, J. and Vartabedian, J.

After appellant's motion to suppress evidence was denied, he entered a plea of guilty to one count of possession of marijuana for sale (Health & Saf. Code, § 11359.) On this appeal, he contends that the court erred in denying his motion to suppress evidence. Specifically, he contends that the officer who found marijuana while conducting a warrantless search of appellant's bedroom did not act reasonably in relying on a computer generated "CJIS" (Criminal Justice Information System) printout showing that appellant was on probation and was subject to a search of his residence for narcotics and drug paraphernalia. In fact, at the time of the warrantless search, appellant was on probation and had agreed, as a condition of his probation, that he could be searched for evidence of stolen property. But the search term was that appellant was subject to search for stolen property, not for narcotics and drug paraphernalia. As we shall explain, the superior court was correct in relying on *People v. Downing* (1995) 33 Cal.App.4th 1641 to deny the motion to suppress. We will affirm the judgment.

**FACTS**

Appellant was on probation at the time of the contested search. The file in his prior case (RM20760) was admitted into evidence prior to testimony.

James Morrison, a detective with the City of Ridgecrest, testified that on the afternoon of April 15, 2000, a confidential informant told him that appellant and his brother possessed marijuana for sale at appellant's apartment. The detective confirmed that appellant in fact lived there, and then he and a dispatcher referenced appellant's information through the Criminal Justice Information System (CJIS). Qualified court personnel were responsible for entering the case information into the CJIS computer program. CJIS indicated that appellant was on searchable probation for narcotics and drug paraphernalia. A police dispatcher operated the CJIS computer terminal, and at 6:55 p.m. printed out the information pertaining to appellant. Detective Morrison retrieved the printed document from the printer.

Detective Morrison then went to appellant's apartment at about 9:10 p.m. to conduct a probation search for narcotics. He did not double-check his information by personally going down to the courthouse and looking at the actual file for case No. RM20760 or by calling appellant's probation officer.

When he arrived at the residence, he knocked on the door. Appellant's brother answered. The detective informed the brother that he was there to conduct a probation search. The brother said "okay," opened the door, and allowed the detective and other officers to enter. Appellant was not home at that time. Upon entry the detective noticed a "very strong odor of marijuana." The detective asked him if there was any marijuana in the residence, and the brother said yes. He then pointed to the northwest bedroom of the residence. Appellant, who arrived about 50 minutes into the search, stated that that was his room. Suspected marijuana was found in appellant's bedroom and in his brother's bedroom. A scanner, baggies, and a job application bearing appellant's name were also found in appellant's bedroom.

In late June a deputy district attorney informed Detective Morrison that appellant was in fact on searchable probation, but for stolen property and not for narcotics. Morrison again checked CJIS which now indicated that there had been a clerical error regarding appellant's search condition. Morrison testified "[w]hen I checked it, I believe it stated in substance that there was a clerical error and that it had been erroneously entered in for the search terms."

STANDARD OF REVIEW

> "'An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] "The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review." [Citations.] [¶] The court's resolution of the first inquiry, which involves questions of fact, is

> reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, … is also subject to independent review.'" (*People v. Alvarez* (1996) 14 Cal.4th 155, 182.)

Detective Morrison was the only witness to testify at appellant's suppression hearing. The "historical facts" were thus not in dispute.

## APPLICATION OF THE EXCLUSIONARY RULE WAS NOT APPROPRIATE IN THIS CASE

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In *Weeks v. United States* (1914) 232 U.S. 383, the court held that in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search. A contention that this so-called exclusionary rule should be applied to exclude illegally obtained evidence in state criminal trials was rejected in *Wolf v. Colorado* (1949) 338 U.S. 25, but the United States Supreme Court later overruled *Wolf* in *Mapp v. Ohio* (1961) 367 U.S. 643. "Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government." (*Id*. at p. 655.) "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." (*Ibid*.)

In *United States v. Leon* (1984) 468 U.S. 897, the court clarified that the exclusionary rule is not a necessary corollary of the Fourth Amendment, and that the issue of whether illegally obtained evidence should be excluded is a separate issue from the question of whether the Fourth Amendment rights of the party seeking to invoke the

exclusionary rule were violated. The exclusionary rule is "'a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." (*Id*. at p. 906.) The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity.'" (*Id*. at p. 919.) The court concluded that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." (*Id*. at p. 922.)

This brings us to *Arizona v. Evans* (1995) 514 U.S. 1. In *Evans* a police officer "acted in reliance on a police record indicating the existence of an outstanding arrest warrant" and arrested Mr. Evans. (*Id*. at p. 4.) During the course of the arrest, the officer discovered marijuana. In fact there was no outstanding arrest warrant. After the officer had stopped Mr. Evans for "driving the wrong way on a one-way street in front of the police station" (*ibid*.), the officer obtained Mr. Evans's driver's license and then "entered respondent's name into a computer data terminal located in his patrol car." (*Ibid*.) "The computer inquiry … indicated that there was an outstanding misdemeanor warrant for (respondent's) arrest." (*Ibid*.) The U.S. Supreme Court applied the rationale of *Leon* to conclude that exclusion of the evidence obtained as a result of the warrantless arrest was not an appropriate remedy. (*United States v. Leon*, *supra*, 468 U.S. 897.) "There is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record. Application of the *Leon* framework supports a categorical exemption to the exclusionary rule for clerical errors of court employees." (*Arizona v. Evans*, *supra*, 514 U.S. at pp. 15-16.)

> "If court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction. First, as we noted in *Leon*, the exclusionary rule was historically designed as a means of deterring police misconduct, not mistakes by court employees. See *Leon, supra,* at

916; see also [*Illinois v. Krull* (1987) 486 U.S.] at 350. Second, respondent offers no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion. See *Leon, supra,* at 916,and n. 14; see also *Krull, supra,* at 350-351.…

"Finally, and most important, there is no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed. Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, see *Johnson v. United States*, 333 U.S. 10, 14 (1948), they have no stake in the outcome of particular criminal prosecutions. Cf. *Leon, supra,* at 917; *Krull, supra,* at 352. The threat of exclusion of evidence could not be expected to deter such individuals from failing to inform police officials that a warrant had been quashed. Cf. *Leon, supra,* at 917; *Krull, supra,* at 352.

"If it were indeed a court clerk who was responsible for the erroneous entry on the police computer, application of the exclusionary rule also could not be expected to alter the behavior of the arresting officer." (*Arizona v. Evans, supra*, 514 U.S. at pp. 14-15.)

*People v. Downing* (1995) 33 Cal.App.4th 1641 was decided less than two months after *Evans, supra*. In *Downing* an officer conducted a search in December of 1993 in reliance on a computerized record showing that the defendant was subject to a Fourth Amendment search waiver not due to expire until December 21, 1995. In fact the search waiver, and the defendant's probation, had expired on December 21, 1992, i.e., a year before the search. The court held:

"We conclude, consistent with the recent announcement by the United States Supreme Court in *Arizona v. Evans* (1995) 514 U.S. ___[131 L.Ed.2d 34, 115 S.Ct. 1185], that where errors exist in such data based on mistakes made solely within the judicial system, the deterrent effect of the Fourth Amendment's exclusionary rule will not be served by suppressing evidence seized in a search based on the 'objectively reasonable' good faith reliance of a police officer on the data generated by the judicial branch of our government, even though that data is later found to be in error and the search is determined to be unlawful." (*People v. Downing, supra,* 33 Cal.App.4th at p. 1644, fn. omitted.)

Appellant argues that we should distinguish *Downing* because the officer in *Downing* "personally checked the computer and the Fourth Amendment log" in obtaining erroneous information, whereas in this case Detective Morrison stood next to a police dispatcher who operated the computer, and then read the paper printout after the dispatcher had the computer print the erroneous information that had been entered into the CJIS computer system by court personnel. We fail to see any significance to this purported distinction. There is no dispute that the erroneous information relied on by Detective Morrison was the CJIS system's information pertaining to appellant. It made no difference whether it was Morrison's fingers or the dispatcher's fingers on the computer keys. Appellant's argument that "there was a lack of evidence that showed what specific information the printout might have contained" is simply inaccurate. The computer printout containing the erroneous information was identified by Detective Morrison at the suppression hearing and was received into evidence as Exhibit 2 at that hearing.

**DISPOSITION**

The judgment is affirmed.